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No.

IN THE

Supreme Court of the United States

LLOYD E. HUMPHREYS AND
HUMPHREYS & ASSOCIATES LAW FIRM, P.C.,
Petitioners,

vs.

CHARLES MEADOWS

On Petition For Writ of Certiorari
To The Texas Supreme Court & Court of Appeals
For the Second District of Texas, Fort Worth, Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Texas courts decisions in our case conflict with this courts holding in Ferri v. Ackerman, 444 U.S. 193 (1979) and other precedent by granting absolute immunity to a Texas criminal defense lawyer from a civil law suit by his "actually innocent" client (and a third party) who would not have been convicted "but for" the lawyer who violated a contract, including the Texas Lawyer's Creed, his fiduciary duty, and intentionally abandoned the criminal defense of Petitioner Lloyd E. Humphreys while trying a case in the federal court in the State of Iowa when the Texas courts denied, peremptorily, the fundamental right of access to the court, a jury determination of facts, equal application of the law, and the right to redress grievances for loss of property and injury by a lawyer by granting, and affirming summary judgment on "public policy" grounds for the criminal defense lawyer's, defendant?

2. Does the diversity and disarray of state court decisions, some of which conflict with this courts precedent, and lack of a uniform standard of access to the courts, the right to a jury trial, the required elements of proof and pleading of a civil malpractice action/breach of duties against a criminal defense lawyer, and application of the law equally to citizens of the several states, require this court's supervision and direction to assure equal rights and privileges and application of fundamental rights, of the "bill of rights", in the United States?

3. Did the Texas courts disparate treatment of Petitioners from others so situated by total denial of fundamental rights of citizen-Petitioners' access to the courts, right to a jury trial, redress of grievances and application of the law violate Articles I § 9, IV § 2, VI, and Amendments V, VI, VII, XIV, of the United States Constitution?

4. Did the political election of Texas Supreme Court and Appellate Court judges and accepting contributions of as much as eleven million dollars ($11,000,000.00) from 1994-98, from lawyers and litigants with cases pending in their court, including defendant and counsel cause a conflict of interest with the Texas Constitution's "open courts" and guarantee to an impartial tribunal, violating the equal protection and due process of the XIV Amendment of the United States Constitution?

LIST OF PARTIES

The parties to this proceeding in the court whose judgment is sought to be reviewed are the Petitioners Humphreys & Associates Law Firm, Iowa Professional Corporation and Lloyd E. Humphreys, former Iowa lawyer that moved to Texas, Plaintiffs, and Defendant, Texas lawyer, criminal defense specialist Charles Meadows in a civil suit for damages as a result of defense lawyer Defendant Meadows abandoning the criminal defense of Lloyd E. Humphreys in the federal court in Iowa in which, Defendant represented him. Lloyd E. Humphreys is Pro Se, Lloyd Charles Humphreys, Garland, Texas, attorney represents Humphreys & Associates Law Firm P.C. Defendant Texas lawyer Charles Meadows is represented by Perry J. Cockerel, and Stephen A. Madsen, Cantey & Hanger Law Firm, Fort Worth, Texas and J. Bruce Bennett, Baskin, Bennett and Komkov Law Firm, Austin, Texas.

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Petitioners respectfully pray for a Writ of Certiorari to review the judgment of the Texas Supreme Court, entered on April 5, 2001 denying Motion for Rehearing En Banc and it's earlier judgment denying review of the Texas Court of Appeals, Ft. Worth opinion affirming summary judgment of dismissal of all causes of action by the district court, of the Petitioner Lloyd E. Humphreys who was "actually innocent" and "but for" the conduct and breach of duties by his criminal defense attorney would not have been convicted, and Humphreys & Associates Law Firm P.C. with a concurring opinion stating:

> I write separately to express my hope that the Texas Supreme Court might use this case to reconsider it's holding in *Peeler v. Hughes & Luce*, 909 SW2d 494 (Tex 1995)...Application of the *Peeler* rule places Humphreys in a proverbial catch 22; **Humphreys alleges facts that on their face, show that he would not have been convicted in his federal trial had defense counsel not made a significant mistake concerning the need for trial objection when it was learned that one of the persons on the jury was a convicted felon...I would argue that the rule of *Peeler* be narrowed so as to...provide a remedy to defendant's who are truly victims of legal malpractice.** (Emphasis added.)

OPINIONS BELOW

The denial of Petitions for Review by the Texas Supreme Court, were by letters from the clerk, dated December 15, 2000 and April 5, 2001. The written opinions of the Court of Appeals, Second District of Texas, Ft. Worth, is unpublished but set out in the Appendix with the District Court opinion and judgment.

JURISDICTION

The District Court, Ft. Worth, Texas granted a total summary judgment of all causes of action of both Petitioners. The Court of Appeals, Ft. Worth, Texas, affirmed with an unpublished concurring opinion requesting the Texas Supreme Court review. A Petition for Review was filed to establish guidelines for actually innocent Plaintiffs like Petitioner Humphreys. Defendant waived resistance. After full briefing, the Texas Supreme Court denied review on December 15, 2000. A Motion for Rehearing was denied on April 5, 2001. The jurisdiction of this court is conferred pursuant to 28 U.S.C. 1257(g), the United States Constitution, Articles IV(2), VI, Amendments VI, VII, XIV, and the general supervisory powers of this court.

CONSTITUTIONAL PROVISIONS AND STATUTES (See Appendix)

1. United States Constitution, Articles IV, (2), VI, Amendments V, VI, VII, X, XIV.
2. Texas Constitution, Article I (2)(3) (Equal Rights, No Special Privileges), (13) (Open Courts), (15) (Right to Jury Trial), (18), (19) (Due Course of Law).
3. Texas Code Crim. Proc., Art. 35.19.
4. Texas Civil Rights & Remedies 33.001 et seq. (Proportionate fault), 71.031 (Causes of Action From Other States).

STATEMENT OF THE CASE

This is a suit by Lloyd E. Humphreys, former attorney, and the professional corporation of which he was senior shareholder and one of several attorneys, Humphreys & Associates Law Firm, Iowa P.C. against Charles Meadows, Texas criminal tax specialist defense lawyer, for the abandonment of the defense in mid-trial of Lloyd E. Humphreys, in a tax evasion case in federal court in the State of Iowa in 1991, and the breach of other legal duties owed to

his clients, the Petitioners, during the trial and after. On the third (3rd) day of trial the defendant lawyer discovered a dishonorably discharged convicted felon on the jury. He then abandoned the defense of his client to shorten the trial. The trial was concluded in two (2) weeks instead of six (6) weeks. The defendant lawyer concealed the discovery of the felon dishonorably discharged juror from his clients, Lloyd E. Humphreys and Humphreys & Associates Law Firm, P.C., and from the trial judge. He made no motions for mistrial or challenges to the juror during the trial. Lloyd E. Humphreys was convicted. Defendant lawyer Meadows then filed a Motion for New Trial, without claiming prejudice to his client a former Judge Advocate officer in the military and continued to conceal from the court that he had discovered the dishonorably discharged felon juror during trial, then abandoned the defense of Humphreys expecting a new trial would be granted. The Motion For New Trial was overruled, because no prejudice was plead or shown.

On appeal of the criminal conviction the Court of Appeals stated:

> **A challenge after the verdict comes too late...(Defense Counsel Meadows) did not pursue any questioning of the juror on voi dire. Nor did he further investigate or raise any challenge during Trial. Having failed to diligently and timely discover the relevant information, he is precluded from being heard on the issue of juror qualification! (R 157 – U.S. v. Humphreys, 982 F2d 254, 261 (8th Cir 1992) (App. 14)**

Later on post conviction relief the Court of Appeals stated:

> Some of the grounds asserted in Humphreys' motion were resolved against him on direct appeal and cannot be re-litigated here...other grounds asserted by Humphreys could have been raised at Trial, or on direct appeal, but were not and are thus procedurally defaulted (Humphreys v. U.S., 89 F3d 840 (8th Cir Iowa 1996.) (Emphasis added.) (App.15) (There was no hearing and no oral argument, one judge would have granted En Banc rehearing).

Humphreys came up for disbarment. The Texas State Board of Disciplinary Appeals (BODA) found that Humphreys should not be disbarred and all charges against him were dismissed. The case was appealed by the Bar Association to the Texas Supreme Court they stated:

> Humphreys claims that he should not be disbarred because of his federal criminal conviction was tainted by legal error. Specifically, he alleges that one of the jurors serving on the federal panel that convicted Humphreys was not qualified to serve as a juror because of a criminal conviction. **Humphreys is correct that a conviction by a Texas criminal court under the circumstances he alleges would be void.** Tex. Code Crim. Proc. Ann. Art. 35.19 (Vernon 1989); Tweedle v. State, 218 SW2d 846 (Tex. Crim. App. 1949). But Humphreys was not convicted in a Texas court, and we think it sufficient answer to point out the obvious, Texas Criminal Procedure does not govern federal criminal Trials in Iowa. (Emphasis added.) In Re: Humphreys 880 SW2d 402, 405 (Tex. 1994) (App. 49) (He was disbarred without the normal procedure of a jury trial.)

The Petitioners, Lloyd E. Humphreys and Humphreys & Associates Law Firm, P.C. brought the present action for abandonment of the criminal defense of Lloyd E. Humphreys in mid-trial, and failure to move for mistrial or challenge the felon juror during trial, and breach of duties of which the criminal conviction was one of the damages from their lawyer Meadows' acts and omissions. Further, after "conviction" Meadows continued his concealment and presented no evidence of when he learned of the felon juror and why he had shortened the trial by not calling witnesses and stipulating disputed income on behalf of Humphreys & Associates Law Firm, P.C. (Not Humphreys individually) with the I.R.S. He "defaulted" and "precluded" Petitioner's post conviction and appellate rights. Petitioners claimed causes of action for: breach of contract, breach of fiduciary duty, fee forfeiture for an unconscionable fee two (2) weeks for $150,000.00; and constructive fraud, intentional misconduct, negligence, gross negligence, tort of concealment, willful disregard of the rights of Petitioners, defamation, and intentional infliction of emotional distress.

The Requests for Admission, First Set of Interrogatories, and Requests for Production of Documents filed 3-28-94 (R 7, 12) by the Plaintiffs were substantially unanswered (R 43, 75, 87), except that the Defendant did admit that he held himself out "as an attorney with special expertise" (R 76) and that "at some point in time he learned that there was...a convicted felon on the jury in such criminal trial..." (R 77), and produced a bill in discovery from his investigator confirming in writing knowledge of a felon juror on the third (3rd) day of trial. (R983, App. 60)

The trial court granted summary judgment in favor of the Defendant on all of both the Petitioners causes of action and granted criminal defense attorneys in Texas absolute immunity from civil suit for all causes of action, if one of the Plaintiffs is "convicted and is not exonerated on appeal, post conviction relief or **otherwise**" and that the "breach of fiduciary duty claims are estopped".

When the "total" summary judgment was granted in the Texas district court it stated:

> I am persuaded by the Defendant's public policy argument. That is, I feel constrained to follow the *Peeler* decision and hold that Mr. Humphreys' claims against Mr. Meadows are foreclosed by Mr. Humphreys' criminal conviction and lack of post conviction relief. I further think that the breach of fiduciary duty claims are estopped, consequently, I am prepared to and will grant total summary judgment to Defendant in this case"....in light of that fact I grant summary judgment motion in its entirety. (R 1003, 1047) (App. 6)

The Defendant filed no affidavits, or evidence, on the merits in support of its motion for judgment except a one (1) page, nine (9) sentence abbreviated affidavit by the Defendant personally. (App. 58) The Plaintiff filed two hundred forty-three (243) evidentiary pages of affidavits, documents and sworn testimony (fact and expert), initially in support of its causes of action and three court decisions (R 535-778), and an additional supplement (R 877 f). Six affidavits were by experts. All this evidence was before the trial court when it made its decision, advised counsel of the grounds, and filed it basis therefore with the clerk. **The facts were not controverted and there is "no genuine issue of fact", or summary judgment could not have been granted as a matter of law.**

The "Final Summary Judgment" (R 1039) Order of 8-18-98 entered after the trial court's initial letter granting judgment and setting out the basis for it, (R 1003, 1047) grants total summary judgment on all causes of action of both Plaintiffs to Defendant, Plaintiffs "take nothing" and are assessed costs.

The Plaintiff's then filed motions for new trial on 9-17-98. (R 1072)

When this case was before the Court of Appeals for the 2nd District of Texas, 938 SW2d 750, (Fort Worth, 1996) in 1996, and on Application for Writ of Error to the Texas Supreme Court, (No. 97-0385) on an earlier matter the Defendant made the same "public policy" argument based on *Peeler* which both the Appellate Court and the Texas Supreme Court did not accept. However, in the Court of Appeals decision in favor of the Plaintiffs, the following footnote was added:

> FN 2 Meadows argues that we should affirm the trial court's order because Humphreys' claim must fall as a matter of law under *Peeler v. Hughes & Luce*, 909 SW2d 494, 498 (Tex. 1995) (client who had pleaded guilty to criminal offense and had not been exonerated of the offense could not recover from defense attorney for malpractice or violation of the Deceptive Trade Practices Act because the client's illegal act was the sole proximate and producing cause of her conviction.) If Meadows is correct that he is entitled to judgment as a matter of law, the proper procedural tactic to dispose of the case would be a motion for summary judgment. *American Medical Electronics Inc. v. Koran* 819 SW2d 573, 576 (Tex. App.-Dallas 1991, writ denied) (defendant entitled to summary judgment where there are no disputed material facts and the plaintiff's legal position is incorrect.) (NB. description of *Peeler*.)

The Court of Appeals for the Second District of Texas, Fort Worth, Texas affirmed the 67th District Court of Tarrant County's judgment dismissing all causes of action by both Petitioners Lloyd E. Humphreys and Humphreys & Associates Law Firm, P.C. based solely on the basis of the "public policy" argument of *Peeler v. Hughes & Luce*, 909 SW2d 494 (Tex 1995) and that the breach of fiduciary duty claim was "estopped". The concurring opinion of Justice David L. Richards in the Second District Court of Appeals

decision asks the Texas Supreme Court to consider it's holdings in *Peeler* and review this case, stating in part:

> I write separately to express my hope that the Texas Supreme Court might use this case to reconsider it's holding in *Peeler v. Hughes & Luce*, 909 SW2d 494 (Tex 1995)...Application of the *Peeler* rule places Humphreys in a proverbial catch 22; **Humphreys alleges facts that on their face, show that he would not have been convicted in his federal trial had defense counsel not made a significant mistake concerning the need for trial objection when it was learned that one of the persons on the jury was a convicted felon...I would argue that the rule of *Peeler* be narrowed so as to...provide a remedy to defendant's who are truly victims of legal malpractice.** (Emphasis added.) (App. 53)

A Motion for Rehearing and En Banc Consideration was filed and overruled and Petition for Review was timely filed with the Texas Supreme Court. Defendants' filed a Waiver of Resistance consenting to Review. (App. 13) Defendants then added another law firm for purposes of appeal. The Supreme Court ordered briefs filed. After Brief in Support of Petition, Responsive Brief and Reply Briefs were filed, the Supreme Court denied the Petition for Review. A timely motion for rehearing was filed. The Texas Supreme Court overruled the Motion for Rehearing on April 4, 2001.

STATEMENT OF FACTS

A. UNDERLYING CRIMINAL TRIAL:

The Defendant Charles Meadows was defense counsel for Lloyd E. Humphreys **in the federal court in the State of Iowa in 1991.** (R 877, 352, 405-7) Humphreys, was the senior attorney of Humphreys & Associates Law Firm, Iowa Professional

Corporation. (R 886, 888, 920) He moved to Texas shortly before his criminal trial and hired Texas attorney Meadows. Originally, Meadows was retained at $250/hour (R 941, 915-919), as specialist in federal criminal tax cases. (R. 76, 904-909) After seven (7) months at $250/hourly fee representation, Meadows converted the Petitioner's contract to a flat fee of $150,000.00 for the estimated six (6) week trial. (R 886-89, 921-22, 925-32, 936-37)

Humphreys & Associates Law Firm, Iowa P.C. had a separate existence from Lloyd E. Humphreys with other lawyers (R 886, 888, 920) and made several fee payments to Meadows. (R 885, 924, 920, 933-935). On the third day of a proposed six (6) week trial the Defendant Meadows learned that a dishonorably discharged convicted felon was a juror. (R 405-7, 983, 539, App. 60) He concealed this from the judge and his clients (R 405, 983).

After discovery of the felon juror and to shorten the trial, Meadows on behalf of Humphreys & Associates Law Firm P.C. in open court entered into a stipulation to save the government from calling it's witnesses, agreeing with the I.R.S. that the Iowa Professional Corporation (not Humphreys) had received disputed income alleged by the I.R.S. (R 722-23) Defense counsel Meadows then stopped objecting to and arguing that the income of the firm was not income to Humphreys individually. (R 723-745) Defense counsel Meadows intentionally did not call any of the twenty-two (22) witnesses disclosed as fact and expert witnesses on the "Defendant's Witness List" filed with the Pretrial Report. Those listed as witnesses and not called to testify included the office manager (R 767), bookkeepers (R 759, 767, 779, 772, 776), tax preparer (R 759, 751) and office staff (R 772, 776, 764, 759).

Prior to the trial, Defendant Meadows stated, "you cannot win this kind of case without an expert". (R 3, par. 6, 406-8) Plaintiff relied upon this, and Defendant Meadows then hired Max Wayman, as his agent, at Plaintiff's expense. Wayman, a former I.R.S. agent and investigator, was to act as the anchor expert witness for the

defense. (R 901-3, 977-988, 961, 991-2) Counsel Meadows obtained the federal trial judge's permission that expert Wayman could sit through the trial to act as an expert summation witness. Expert Wayman was not called to testify by Meadows. (R 405-6, 983)

Defendant Meadows waived the local rules of the U.S. court in Iowa requiring local co-counsel stating he had "significant experience representing clients in federal court" (R 904-909) Meadows admits that he held himself out as having special expertise in tax matters". (R 76)

The criminal trial was concluded by Meadows in two (2) weeks, rather than six (6) weeks. (R 903, 406) After the close of evidence, while waiting for the jury's verdict, Defendant Meadows told Humphreys for the first time that his agent Max Wayman had discovered the felon juror during the trial and said:

> "Don't worry, we've got a free pass. It's like an off sides penalty. We get to choose whether to accept the penalty or go forward with the play. We get a new trial if they convict. Maybe they won't". (R 406, 2)

The felon jury convicted. After conviction Meadows then filed a Motion for New trial on the basis of the disqualified convicted felon being on the jury. No prejudice was alleged at the hearing he did not claim Humphreys, a former Judge Advocate officer, would be "prejudiced" by the dishonorably discharged felon juror. He also continued to conceal from the court the discovery of the felon juror during trial and its affect shortening the trial by not calling witnesses.

During the trial Meadows did not object, or move to discharge or strike the convicted felon juror. He did not challenge him for cause, or peremptorily, nor move for a mistrial. (R 539-40, 723-745) His first disclosure of the convicted felon juror to the court and his client Petitioners was only after verdict, and the close of all the evidence. (R 405, 983) It was expert-investigator Wayman,

Defendant Meadows' agent, that verified the felony conviction of the juror on or about the third (3rd) day of trial. (R 983, "smoking gun", App. 60) Meadows and Wayman both kept their knowledge confidential and concealed not disclosing it to the Plaintiffs or the Court during trial. (R 77, 406-7, 983)

Wayman billed Meadows for his time after trial on or about August 28, 1991. (R 977, 989) Wayman's invoice time shows in part (R 983): **("Heskett" was the felon juror.)** (This was produced in civil discovery in this case.)

> "August 7-9 Attendance and involvement in trial
>
> August *12...**Obtained address and telephone number information regarding Floyd J. Heskett. Telephone conversations with investigating sources to investigate the driving and criminal history of Floyd J. Heskett.**
>
> August 13 Attendance and involvement in trial" (App. 60)

Humphreys requested an affidavit from Wayman and Meadows for post conviction relief. (R 994) They refused. (R 993) Neither Meadows, nor Wayman have given an affidavit or sworn statement of any kind to support Humphreys in post conviction relief, appeal, or reinstatement to the bar. Nor have they denied or contested the facts herein in affidavit or briefing. Humphreys lost the appeal and post conviction relief although the court found Meadows had "precluded" and "procedurally defaulted" his rights. (R 157-Appendix to Petition for Review) The court did not allow hearing or oral argument on post conviction relief.

After Meadows' representation ceased Humphreys successfully passed a polygraph examination showing he was innocent of the criminal charges. (R 749-750) The police operator certified the results and gave an expert opinion affidavit that they were true, as part of the summary judgment evidence. (R 751-52)

Humphreys has not, at any time, admitted guilt to the criminal charges even under the consequences of sentencing for "not accepting responsibility". (R 407)

B. BREACHES OF DUTIES-CIVIL CASE:

Testimony of the witnesses as shown by affidavits herein not called as witnesses in the criminal trial by Meadows would have provided evidence of Humphreys' defenses in the tax case. (R 523-531, 754, 777, 402-408, 749-752) Reliance on the advice of a tax accountant who has access to all information necessary to prepare an accurate and complete tax return is a complete defense to the charges brought against Lloyd Humphreys in the tax case. (R 523-531, 749-52) The Plaintiffs offered affidavits from six (6) experts in the summary judgment evidence.

> "...The fact that Lloyd Humphreys did not receive the income alleged by the Government to have been paid to him; reliance on the advice of a tax accountant who has full access to all information necessary to prepare an accurate and complete tax return and that the alleged unreported income is less than thirty percent of a taxpayer's reported income and, therefore, not "substantial". Are all defenses to the charges brought against Lloyd Humphreys in the tax case...it was a breach of the standard of care for Meadows not to have vigorously cross-examined or presented those witnesses...**it is my professional opinion that Meadows breached his duty of care to Lloyd Humphreys and to P.C. by not familiarizing himself with the substantive and procedural law in the federal district in which he represented Lloyd Humphreys...showed an entire want of care and total disregard for the duties of competent and diligent representation owed by him. In my opinion a flat fee of $150,000.00 is excessive under the circumstances".**

Affidavit of Texas Attorney (Independent Expert) Gary Krupkin (R 527, 528, 529).

...**As bookkeeper and tax preparer of various tax documents for Humphreys & Associates Law Firm and for Lloyd E. Humphreys** during the same period of time, I had interchange with members of his staff and with Diana Lee Humphreys, Mr. Humphreys ex-wife, who was at that time acting as bookkeeper and was writing checks upon his accounts. During that period of time Lloyd Humphreys was quite busy in the practice of law and left to either his staff, his ex-wife or to myself the preparation of supporting tax documents, check writing and all accountings and financial systems. **In my dealings with Lloyd Humphreys over the years I have come to believe that he is an honest man and was always honest in his dealings with me. He did not claim any deduction nor any other tax advantage that I did not advise him to claim and his tax returns were in all ways proper**...Affidavit of Dave Prudden, (CPA, Tax Preparer) (R 761).

...**I completed all state and federal tax**, payroll, employment and unemployment forms. Lloyd E. Humphreys was busy practicing law and all bookkeeping, collection, bank deposits and records were done by other people. I reconciled the checking accounts monthly. **I had free run of the entire office and all accounting records. No accounting records of any kind were ever withheld or denied to me.** Affidavit of Walt Egner, (CPA, Tax Preparer) (R 759)

...Did everything happen like you said? ANS YES. **Were your tax returns completely prepared by your accountants in 1983/84/85/88 &89? ANS YES. Did your accountants have all information available to**

them? ANS YES. Did you answer all your accountants' questions honestly? ANS YES. Did you intentionally withhold any information from your accountants? ANS NO. Did you willfully evade your Income Taxes? ANS NO. Conclusion. Based on the information furnished, information learned in the interview, a careful evaluation of the charts conducted during the examination, no specific responses within the criteria of deception were noted on relevant questions indicating **no attempt at deception**. Affidavit John L. Phillips, Examiner (R 750)

...As a principal of the P.C. **I believed in 1991 that an attorney-client relationship existed between the P.C. and Meadows**. I participated, as principal of the P.C., in at least one initial conference with Meadows or lawyers at his firm concerning Meadows' or his firm's representation of Lloyd E. Humphreys in the tax case. I believed that the scope of Meadows' representation of the P.C. was to protect the P.C.'s interests by protecting Lloyd Humphreys' law license, a conviction would have a detrimental effect on the P.C. I also believed the interests of Lloyd Humphreys and the P.C. was aligned at the time of the trial in the tax case in August 1991. Affidavit of Texas Attorney Lloyd Charles Humphreys (R 520)

That the alleged unreported income was less than thirty (30) percent of the taxpayers reported income and, therefore, is not "substantial" (defined as 30%) is also a defense to the charges brought against Lloyd Humphreys in the tax case. (The claim was for $21,000 total over a five-year period (i.e. $4,200/year). Expert testimony by accountants, preparers, experts, office managers and office staff establish several defenses, but Meadows did not call them to testify. (R 542-721 App.)

REASONS FOR GRANTING WRIT

I.

THERE IS A SEVERE CONFLICT IN THE HIGHEST COURTS OF THESE UNITED STATES IN REGARD TO THE RIGHTS AND ELEMENTS NECESSARY TO PLEAD AND PROVE CIVIL ACTIONS AGAINST CRIMINAL DEFENSE LAWYERS BY VICTIMIZED CLIENTS, CAUSING IN SOME STATES INCLUDING TEXAS, THE LOSS OF FUNDAMENTAL RIGHTS AND REMEDIES TO A JURY TRIAL, ACCESS TO THE COURTS, AND REDRESS FOR GRIEVANCES DIFFERENT FROM OTHERS SIMILARLY SITUATED. THIS INTENTIONALLY RESULTS IN DENIAL OF EQUAL PROTECTION IN THE ADMINISTRATION OF JUSTICE, LOSS OF ACCESS TO THE COURTS, LOSS OF PRIVILEGES AND IMMUNITIES AND DUE PROCESS OF LAW TO A WHOLE CLASS OF PLAINTIFFS TOTALING MILLIONS OF CITIZENS INCLUDING THE PETITIONERS IN THIS CASE. SOME STATES INCLUDING TEXAS, ALSO GRANT SELECT FAVORITISM AND ARBITRARILY DISCRIMINATE GRANTING CRIMINAL DEFENSE LAWYERS THE PRIVILEGE OF IMMUNITY FROM CIVIL LAW SUITS.

Many of the state courts' decisions are preemptory denials of actual and substantial fundamental rights of individuals, and an entire class of the "citizens of each state...entitled to all the privileges and immunities in the several states" (Art. IV (2)). "The judges in every state", especially Texas should be bound (by the United States Constitution) "the laws of any state to the contrary not withstanding". (Art. VI App. 23)

Currently, the states lack a uniform standard and are in disarray and disparity for pleading and proving civil malpractice, and breach of common law duties against criminal defense lawyers.

This is an issue of considerable national importance. Article IV 2, of the Constitution is being violated by Texas and the minority states! That provision of the Constitution was, "to place citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned (*Supreme Court of Virginia v. Friedman*, 487 US 59 (1988)). The different cases in the various states with Texas and our case being the worst, deny fundamental rights while other states grant them. When the issue of getting "tough on crime" became a political issue many states deviated from the common law tradition of allowing juries to decide fact issues in the same manner as applied to any professional misrepresentation and breach of duties owed to clients. The state courts addressed the same issue but came to different judgments. Thus, citizens are being treated disparately!

Some courts have usurped the traditional jury function and began to pre-empt clients suffering from the misconduct of their criminal defense lawyers from access to juries. Those courts adopted protective approaches ranging from immunity on "public policy" grounds, to stiffer pleading requirements, to a heightened threshold of liability. Many denied the injured client access to the courts, a jury, and obstacles not placed on other Plaintiffs suing lawyers, or other professionals. Criminal defense lawyers have been set apart with a special privilege of court originated unqualified immunity, even greater than the "qualified immunity" of prosecutors. Injured clients are denied equal protection, privileges and immunities, and the traditional due process of law. If criminal defense attorneys should be given special treatment, and their victimized clients denied fundamental rights in the different states, the supremacy clause of the U.S. Constitution and the XIV Amendment require that a satisfactory standard be set by this court by which causes of action and defenses are evaluated across the nation. The various state courts, especially Texas, have so far departed from the accepted usual course of judicial proceedings as to call for the supervisory power of this court. Now, the residents of different states are treated materially differently. The effectiveness and

integrity of our traditional justice system is in question! A system of justice is only as fair as its equal treatment of its citizens. The slippery slope that has started is going down hill quickly. This courts action is necessary!

Our case finds the Texas judges to the far extreme of all other state courts in granting a complete and absolute immunity to criminal defense attorneys for all causes of action including those for which they have the burden of proof and also establishing extreme obstacles for the Plaintiffs. An "actually innocent" Plaintiff who "but for" counsel's misconduct would not have been convicted is not enough in Texas. Even a Plaintiff Humphreys & Associates Iowa Law Firm P.C. is denied access and right to a jury by its association with a "convicted" actually innocent client of the lawyer. **Defendant Meadows held himself out as a specialist and should have been held to a higher standard of care not a lower one (See *Rhodes v. Battilla*, 848 SW2d 833, 843 (Texas App Houston 1993).** This case puts Texas in a category all its own different from all other states. **(See App. 62 for full list of states and citations for diverse positions.)**

The states are divided into the following different positions: (1) the majority twenty-six (26) appear to follow the traditional common law, treating Plaintiffs and lawyer Defendants like all other citizens with the same rights and remedies and liabilities with access to the courts and jury trials on fact issues, without special privileges and immunities for criminal trial lawyers. This is also the position of this court established in *Ferri v. Ackerman*, 444 U.S. 193, 62L.Ed2d 355, 100 S.Ct. 40 (1979); (2) six (6) states require Plaintiffs to plead and prove "actual innocence", in malpractice actions and it is not necessary to first be "exonerated on appeal, post conviction relief, or otherwise"; (3) nine (9) states and the District of Colombia have held that if a Plaintiff was not able to win his post conviction relief to establish his criminal defense lawyer was constitutionally "ineffective", the plaintiff may not bring a civil action because of "collateral estoppel"; (4) eight (8) states have held a guilty plea in

the underlying criminal case bars a civil malpractice action; (5) three (3) states hold a defense counsel's reasonable exercise of professional judgment, or a good faith mistake bars a civil suit; (6) out right immunity is granted to criminal defense lawyers in **TEXAS** (for the first time in this case), Delaware, Florida and North Carolina; and (7) four (4) states including Texas, previous to the extension of our civil case, have barred Plaintiffs from civil actions against their criminal defense lawyer unless they first obtain relief, by a successful appeal, post conviction relief, or "otherwise". (See App. 63 for complete list of case citations in each category above.)

II

NO OTHER STATE COURT HAS EVER GONE AS FAR AS THE TEXAS COURTS HAVE IN THIS CASE IN EXTENDING THE "PUBLIC POLICY" FAVORING CRIMINAL DEFENSE ATTORNEYS IMMUNITY, AND DENYING FORMER CLIENTS, ACCESS TO THE COURTS, THE RIGHT TO A JURY TRIAL, EQUAL PROTECTION AND DUE PROCESS OF LAW. THE DECISION BELOW IS ACTUALLY IN CONFLICT WITH TEXAS LAW AND IS AN EXREME DEPARTURE FROM ALL OTHER CASES IN THE UNITED STATES.

Prior to our case, Texas and no other state, has ever estopped or barred access to the courts and jury for traditional common law cases of action; petitioners causes of action for: fraud, breach of contract, unconscionable fee, and fiduciary duty (In breach of fiduciary duty and unconscionable fee causes of action the burden of proof is on the Defendant, not the Plaintiff. *Cole v. Plummer*, 559 SW2d 87 (Eastland 1977, Writ Ref. N.R.E., *Archer v. Griffin*, 390 SW2d 735 (Tex 1964)). Access to the court and jury finding of facts were forbidden to the petitioner's causes of action for violations of the Texas Lawyers Creed (part of contract), intentional torts and breach of duties. No other case has denied an "actually innocent" Plaintiff that "but for" his defense lawyer's actions would

not have been convicted of a crime access to the courts and jury determination on facts.

In *Peeler v. Hughes & Luce*, 909 SW 2d 494 (Tex 1995) Texas set up its "public policy" immunity for defense lawyers. But even there, they emphasized the guilty plea of the Plaintiff and the limited holding to the malpractice cause of actions and other causes of action were specifically excluded from the decision. (See App. 53)

It should also be noted that these "public policy" cases emphasize the proximate cause and possible Plaintiff fault issue, totally ignoring the comparative fault – proportionate responsibility considerations that have become the law of the land (See e.g. TX Civil Pract. & Rem. Code 33.01 et seq., proportionate fault App. 27), at or about the same time these court originated obstacles to Plaintiffs and immunity for criminal defense lawyers was developing. The proximate cause/comparative fault issue has long been a fact issue to be decided by a jury not preemptively by a court. The "public policy" argument cuts off injured Plaintiffs' suits against criminal counsel from what every other Plaintiff is entitled to under the law; a determination by a jury of a fact question.

The "collateral estoppel" and "public policy" immunity granted a defense lawyer is in opposite extreme to the traditional law considerations. These bars to court and jury access require a criminal defense lawyer's injured former client to have a conviction overturned as a condition precedent to a malpractice suit. Although, just as any other malpractice Plaintiff the "suit within a suit" (*Cosgrove v.* Grimes, 774 SW2d 662 (Tex 1989)), element would require proof that "but for" the criminal defense lawyer's conduct being a substantial factor in bringing about the injury it would not have otherwise occurred. In our case, both Appellate and post conviction relief courts found that the Defendant Meadows was negligent or intentionally acted when he, in their words "precluded" and "procedurally defaulted" client Humphreys' rights. They certainly did not find Meadows "effective". Yet, those

courts did not have the full story of Meadows' misconduct before them, as we do here because of civil discovery production. (App. 58) No hearing and no argument was granted in the post conviction relief petition and discovery responses in this case produced the "smoking gun" bill showing on paper the date of Meadows' knowledge of the felon juror on the third (3rd) day of trial. (App. 60) An exonerating polygraph exam and witnesses not called by the defense lawyer in the criminal action who have given their affidavits also show-exonerating defenses for Petitioner Humphreys. (R 751)

Please note, that our case is in the strongest possible position to come before this court. The summary judgment rules require Petitioners' affidavits to be accepted as true with all reasonable inferences being drawn from them. Plus, the affidavits and facts are not controverted, nor rebutted in any way by Defendant. They cannot be denied or a "genuine issue of fact" would preclude summary judgment as a matter of law! None of their briefs in the courts below ever claimed the facts as untrue, nor did they state Humphreys was "guilty"- only that he had been "convicted". Yes, he was "convicted" because his defense lawyer abandoned his defense when early in the trial the lawyer determined that a dishonorable discharged convicted felon was on the jury, and believed that federal law, like Texas law, would require a new trial and he could collect a second flat fee of $150,000.00 for a new trial. Meadow's Motion for New trial, did not even claim prejudice as to the dishonorably discharged felon, sitting in judgment of Humphreys, a former Army Judge Advocate and first defense lawyer in Vietnam. Texas law does not require a "prejudice" showing. A verdict with a felon juror is void in Texas, *In Re Humphreys*, 880 SW2d 402 (Tex 1994) (App. 49), unfortunately, not in the federal court in Iowa. Meadows' also concealed his discovery of the felon juror during and after trial and how he abandoned the defense.

Texas has a long history of protecting its lawyers from malpractice suits. In the 19th century they established a "gross ignorance and neglect" standard. (*Morrill v. Graham*, 27 Tex 646 (1864)). That was modified to the "exercise of reasonable care and skill", but that was modified to allow a defense if the attorney acted in "good faith". (*Great American Indemnity Co. v. Dabney*, 128 SW2d 496 (TEX APP-Amarillo 1939). This defense continues privileging lawyers from other professionals (See *Cook v. Iron*, 409 SW2d 475 (TEX APP-Amarillo 1966), *State v. Baker* 539 SW2d 367 (TEX APP-Austin 1976). Perhaps, this played a part in the Texas courts' consideration of our case. Two articles state:

> "Until recently, Texas courts have consistently concluded that a trial attorney's professional judgments were immune from serving as a basis for liability...a trial lawyer's judgment with respect to...trial related matters were traditionally protected decisions". (Beck, "Legal Malpractice", Baylor L.R.3:1 (1998).

> "Apparently, no legal malpractice cases in Texas have awarded damages to clients suing for alleged negligence in the litigation of a criminal case...the attorney will not be held liable due to the immunity doctrine. Ward, Legal Malpractice in Texas 19, So. TX L.R. 587, 601 (1978).

Texas has held that a "specialist" should be held to the standard of the reasonably prudent expert attorney in that field. (*Rhodes v. Batilla*, 848 SW2d 833, 843 (TX APP-Houston 1993). Defendant Meadows in his response to Requests for Admissions did admit that he held himself out, "as an attorney with special expertise" (R 76) and that "at some point in time he learned that there was...a convicted felon on the criminal jury in such criminal trial". (R 77)

The "collateral estoppel" immunity for criminal defense lawyers that relies on a post conviction relief determination that the lawyer was not "ineffective" is a perversion of the doctrine of civil estoppel. Criminal constitutional "ineffectiveness" and civil malpractice have totally different standards of proof and presumptions. First, the two-prong test of *Stickland v. Washington*, 466 US 668 (1984) for evaluating criminal ineffective assistance requires a showing that the attorney's performance was so "deficient" that counsel was not functioning as the attorney guaranteed by the VI Amendment, considering all the facts of the case. The reviewing court must be highly deferential and evaluate the facts as they were seen at the time, starting with a presumption in favor of the attorney, whether the counsel's actions were within "reasonable judgment", giving wide latitude to the lawyers "tactical decisions". (Id at 689) Thus, if counsel's choices can be explained as among available choices at the time, the representation is presumed reasonable. In addition, overcoming the presumption of reasonable judgment by the attorney, it must be shown that the actual prejudice was suffered and a fair trial with a reliable result denied. (Id at 687) In *Lockhart v. Fletwell*, 506 US 364 (1993) an additional consideration was added to the analysis, that focus should not be on the "outcome determination", but "overall fairness, even if this is different retrospectively than prospectively. So, even if conduct is unreasonable and prejudicial malpractice, ineffective assistance will not be found where it appears the outcome was fair. Some have attributed this to a "perversion of the harmless error" rule in order to "avoid unnecessary remand and new trials". (Levinson, "Don't let sleeping lawyers lie: raising the standard for ineffective assistance of counsel, 38 Amer. Crm. L.R. 147, 171 (2001)); Greimer, "A Decade of Strickland's Tinhorn: Doctrinal & Practical Undermining of the Right to Counsel; 4 Wm & Mary Bill Rts. J. 93, 131-33 (1995)). So the Defendant has the burden of proving both the error and that the error was not harmless in criminal "ineffectiveness". It is always difficult to prove a negative. This makes the victim of ineffective assistance work twice as hard as an ordinary defendant, a considerable difference from a civil

preponderance of evidence. (Id. See also *Glenn v. Aiken*, 569 NE2d 783 (Mass 1991). In our case, the criminal post conviction relief petition was decided without hearing, and without argument on appeal, and yet, it was still found that the defense counsel had "waived" and "procedurally defaulted" the rights of Humphreys. Had the courts known he had abandoned the entire defense by not calling any of the twenty-two (22) witnesses on the merits on the Witness List, shortening a six (6) week trial to two (2) weeks because he believed a new trial would be automatically given, and he could collect a second fee of $150,000.00, all because he discovered a felon juror in mid-trial and believed the verdict, if guilty, would be void, like Texas law provides, perhaps then, "ineffectiveness" would have been found. **In any case, the parties, the burden of proof, the presumptions, and the prospective–retrospective view make the post conviction determination of constitutionally ineffective counsel a wholly different proceeding from a civil malpractice action with comparative negligence/proportionate fault considerations.** (TX Civil Pract & Rem Code § 33.001-016 (App. 27) Pattern Jury Instruction 3.2 Sole proximate cause (can be more than one cause)).

This court in considering a similar comparison between civil and criminal proceedings for "collateral estoppel" has denied repeatedly that the doctrine of collateral estoppel would apply because of the "different standards of proof in criminal and civil action". (See "Conviction or Acquittal as Bar", 135 L.Ed2d 1133-Re Civil Forfeiture/Double Jeopardy Considerations.) It should also be noted that when a defendant is successful in showing constitutionally ineffective counsel, it is <u>not</u> a collateral estoppel bar to the "ineffective" defense counsel from defending the malpractice case. (See, e.g. *Myler v. Wilkinson*, 435 So2d 1237 (Ala. 1983), *Martin v. Hall*, 97 Cal RepR. 730, 53 ALR 3d 719 (1971). The fact question is left open to a jury for the privileged criminal defense lawyers; but foreclosed as to their victimized clients, and access to court and jury denied.

III

THE TEXAS COURT'S HOLDING IS DIRECTLY CONTRARY TO THIS HONORABLE COURT'S HOLDING & PRECEDENT IN *FERRI V. ACKERMAN*, 444 US 193, 62 .ED2D 356, 100 S.CT. 402 (1979).

This speaks for itself! (See App. 33) Our case involves the action of a Texas trial lawyer in the United States District Court for the Northern District of Iowa. Texas courts ignore this precedent to the contrary.

IV

THE TEXAS COURTS HAVE ARBITRARILY DISCRIMINATED AGAINST THE PETITIONERS DENYING THEM FUNDAMENTAL RIGHTS THAT ALL OTHER CITIZENS HAVE BY: A) FAILING OR REFUSING TO APPLY THE CIVIL PRACTICES AND REMEDY 71:031; B) CONFLICT OF LAWS RULES REQUIRING THE SUBSTANTIVE LAW OF THE STATE OF IOWA TO BE APPLIED; C) BY EXTENDING THE APPLICATION OF A 1995 CHANGE IN TEXAS "LAW" "PEELER-PUBLIC POLICY" BY A GUILTY PLEADING PLAINTIFF IN AN EX POST FACTO "RETROACTIVE" APPLICATION TO SUBSTANTIVE RIGHTS FOR BREACHES OF FIDUCIARY DUTY, CONTRACT MALPRACTICE, GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT INJURING AN "ACTUALLY INNOCENT" PLAINTIFF THAT OCCURRED IN THE FEDERAL COURT IN IOWA IN 1991; D) BY NOT FOLLOWING LONG ESTABLISHED TEXAS PRECEDENT THAT A JURY VERDICT IS VOID IF A DISQUALIFIED FELON IS ON THE JURY. (TX CRIM COD ART. 35.19, *TWEEDLE V. STATE*, 218 SW2d 846 (1949); E) FAILING TO HONOR THE TEXAS CONSTITUTION PROVISIONS REQUIRING OPEN ACCESS TO THE COURTS, EQUAL RIGHTS AND NO SPECIAL

PRIVILEGES TO ANY SET OF MEN, RIGHT TO A CIVIL JURY TRIAL AND DUE PROCESS OF LAW; AND F) IGNORED THE PRECEDENT OR *FERRI V. ACKERMAN*, 444 US 193, 62 L.ED2D 355, 100 S.CT. 402 (1979).

Others similarly situated in the State of Texas have had the benefit of the laws and precedent of the United States and Texas. The judges of the State of Texas have violated Articles I, § 2 (Privileges & Immunities), and VI (Supremacy Clause) and Amendment XIV of the United States Constitution, denying Petitioners their day in court. They applied a new Texas case holding in 1995 retroactively to the malfeasance and nonfeasance of the criminal defense lawyer in the federal court in Iowa in 1991. They refused to apply their own conflict of laws rule and any federal precedent requiring the substantive law of the tort location to be applied. (Texas Civil Pract & Rem Code, 71.031 , App. 27.) In Iowa, the location of the misconduct, there is no disparity for Plaintiffs in legal malpractice actions and criminal defense attorneys are not given immunity, but treated like all other lawyers. See, *Baker v. Peal*, 225 NW2d 106 (Iowa 1975). Nor did the Texas judges apply their own law holding the criminal verdict as "void" because a convicted felon was on the jury. They further ignored the "law of the case", and the finding In Re Humphreys, 880 SW2d 402, (Tex 1994) (App. 49.) In that case, the Texas Supreme Court held Iowa law, not Texas law, applied. They held "Texas...does not govern federal trials in Iowa (Id at 405) (App. 50). Then in 2001, they reversed themselves and applied Texas law.

When the Petitioner Lloyd E. Humphreys moved from Iowa to Texas shortly before trial, he expected that the fundamental rights of citizens would still be his, and that adversaries would not be given legal absolute immunity, even greater than the President of the United States. Art. 1 §3 of the Texas Constitution allegedly protects equal rights and avoids any "set of men", "exclusive separate public emoluments, or privileges". (App. 25)

Art. 1 §13 Id. Provided "all courts shall be open, and every person...shall have remedy by due course of law". Here, access to the courts and due process was peremptorily cut off to the Petitioners, a resident of Texas, which had moved from Iowa, and a professional Iowa corporation. Art. 1 §15 Id. Should have kept access to the courts open. It provides, "the right to a trial by jury shall remain inviolate". Here, the fundamental right to a jury trial on traditional fact issues was peremptorily denied contrary to the common law.

Art. I §19 Id., states "no citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due court of the law of the land". Here, not only was a citizen of Texas that had moved from Iowa deprived of over $200,000.00 paid to the Defendant, even though he breached the contract, the Texas Lawyers Creed, his fiduciary duty and perpetrated an intentional fraud on the court, but a citizen of Iowa, the P.C. was also so deprived.

The Texas Courts have perverted and destroyed the plain meaning of statutes, cases, and fundamental constitutional rights in both the United States and Texas Constitutions. They have by court decision usurped the powers of the legislature, congress, and this court. The established law of the land and the common law has been ignored!

V

THE EXTRAORDINARY AND EXTREME DEPARTURE FROM ACCEPTED JUDICIAL, CONSTITUTIONAL AND STATUTORY PRECEDENT WARRANTS SUMMARY REVERSAL BY THIS COURT.

The denial of relief and finding below by the Texas courts is so erroneous and contrary to the law established that it should be summarily reversed, in accordance with Rule 16.1 of this Court. Petitioners have been intentionally treated differently from others similarly situated and there is no rational basis for that different

treatment. (See Reasons II, IV) (*Village of Willowbrock v. Oleth*, 528 US_____, 145 L.Ed2d 1060, 1063, 120 S.Ct. _____ (2000).

There is no controverted fact here! Defendant did not file affidavits denying the discovery of a convicted felon in mid-trial, and therefore, abandoning the defense to shorten the estimated six (6) week trial to two (2) weeks. If there had been a "genuine issue of fact" no summary judgment could have been granted under the law. That may also explain the "star chamber like" proceedings in our case, the Court of Appeals does not publish the Opinion even though the concurring Opinion requested the Texas Supreme Court review to "provide a remedy to defendants who are truly victims of legal malpractice". The Texas Supreme Court, after Defendant waived resistance to review does not review and state an opinion. Thus, the Court of Appeals request for review Plaintiff's Petition, Defendant's Waiver of Resistance and the briefing by the parties are all ignored and the case is quietly, "sub rosa" put away without a reported opinion. It is submitted no opinion contrary to the relief Petitioners prayed could have been written sooooo.....

Further, in addition to the bias and prejudice in favor of criminal trial lawyers in Texas, another constitutional violation of equal protection, privileges and immunities and due process is at work here in favor of the Defendant and his two-law firm defense team, contributors all to the judge's re-election.

Texas judges at all levels are selected via partisan elections. (TEX CONST. Art. V §2, 4, 7, 15, 18) (App. 25) The Judicial Code of Conduct allows judges to solicit campaign cash from litigants and attorneys with cases pending before them. (TEX Code Jud. Conduct, Canon 4 (d) (1), reprinted Tex. Gov't Code, Tit 2, sub title G app. B (Vernon 1997)) (App. 29) Case law does not require judge's recusal from cases with large contributors. (See e.g. *Apex Towing v. Tolin*, 997 SW2d 903, 907) (Tex. App-Beaumont 1999)

In a 1999 poll, 99% attorneys and 86% of the judges said campaign contributions influence judicial opinions. ("Sale of Justice

in Texas Courts" 41 S. TX L.R. 1415 (2000) (TX Sup Ct Poll)) Supreme Court Justices raised eleven million dollars from 1994-1998. Attorney Cristen Feldman (Id at 1416) states:

> "Justice is in a state of crisis in Texas. The current system of judicial selection in Texas undermines the rule of law. Litigants of average means are not receiving a fair shake in Texas courts for they are unable to curry favor by contributing campaign cash. This is a violation of basic due process".

The sale of justice, or denial of it, has been a concern of our forefathers since day one. Secrecy and star chambers like proceedings have been abhorred. Our state constitutions set out boldly that it wouldn't be allowed. (See e.g. Oregon Constitution Bill of Rights, Art. I., Section 10 (1857) "No court shall be secret, but justice shall be administered openly and without purchase...and everyman shall have a remedy by due course of law for injury to him..." Indiana constitution (1816) Art. I. Section II, "all courts shall be open and every man...shall have remedy...by due course of law, justice shall be administered freely, and without purchase"... The Magna Carta stated: "we will sell to no man, we will not deny or defer to any man either justice or right". Coke interpreted that as, "every subject...may take his remedy by the course of law, and have justice, and right for the injury done to him, without sale, fully without any denial...(Coke, Second Institute at 55. (1797)). These are fundamental rights, denied in this case!

CONCLUSION

The Texas courts in our case have established new standards different from all other plaintiffs and defendants, setting up extreme obstacles for plaintiffs and special privileges and immunities for defendant criminal defense lawyers. These lines are inconsistent with the equal protection and due process clauses of the XIV Amendment. Many other states have done this, but not to the Texas extreme. They are not consistent with the obligation to avoid

arbitrary and disparate treatment. They do not satisfy the minimum requirements to secure fundamental rights. The concept of one group granted immunity and another's obstacles to fundamental rights, different from all others similarly situated, are hostile to our Constitution, this Courts precedent, and even state constitutions and statutes. The state courts have stepped away from established practice allowing access to the courts, right to a jury determination of facts, and a remedy for grievances! This court must take action to preserve the integrity of our system of civil justice.

For the above reasons, the Petitioners respectfully request that this Petition for Writ of Certiorari be granted.

Dated:_____.

Respectfully submitted,

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